

**Iowa Department of Natural Resources  
Environmental Protection Commission**

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**ITEM**

**8**

**DECISION**

**TOPIC**

**Environmental Monitoring and Laboratory Services – University of  
Iowa Hygienic Lab**

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The Department requests Commission approval of a contract in the amount of \$359,766 with the University of Iowa Hygienic Lab with the intent of aiding the Director of the Iowa Department of Natural Resources in determining the quality of the environment of the State of Iowa by providing field and laboratory services in support of environmental control programs and summarizing and reporting environmental quality data.

The contract scope of work includes:

- Water Quality Monitoring: Influent and effluent composite samples; fish kill monitoring; emergency response; fish tissue monitoring, and storm water runoff.
- Water Supply Support: Drinking water and public water supply monitoring.
- Director's Office: One part-time staff position to represent the Department on various boards and committees and coordinating Department activities involving agriculture with commodity organizations, wildlife groups, environmental organizations, federal and state agencies, and other stakeholder groups.
- UST Corrective Action Specialist: One staff position to manage corrective actions at high risk leaking underground storage tank (LUST) sites
- Dam Safety Inspection: Three part-time staff positions to inspect all dams (nearly 300) in the state that are classified as "major"

The University Hygienic Laboratory (UHL) is the State of Iowa's Environmental and Public Health Laboratory. The Department has several contracts with the laboratory to provide analytical and fields services.

This contract is federally funded through the U.S. EPA Performance Partnership Grant and the EPA Section 319 Nonpoint Source Management Program.

Barbara Lynch, Chief  
Field Services and Compliance Bureau  
Environmental Services Division

Memo Date: April 21, 2008

**IOWA DEPARTMENT OF NATURAL RESOURCES**

**CONTRACT NUMBER 09-7000-01**

**Between**

**IOWA DEPARTMENT OF NATURAL RESOURCES**

**and**

**THE UNIVERSITY OF IOWA**

**Agreement Title: Environmental Monitoring & Laboratory Services**

This Contract was approved by the Environmental Protection Commission/Natural Resources Commission on **DATE**

IN WITNESS THEREOF, the parties hereto have executed this Contract on the day and year last specified below.

Contractor:

RESOURCES

By: \_\_\_\_\_  
Twila Fisher Reighley, Asst. VP for Research

Date: \_\_\_\_\_

Fed Tax I.D. Number: 426004813

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DEPARTMENT OF NATURAL

By: \_\_\_\_\_  
Liz Christiansen, Deputy Director

Date: \_\_\_\_\_

## SPECIAL CONDITIONS

This Contract is entered is between the Iowa Department of Natural Resources (DNR) and The University of Iowa. The parties agree as follows:

### **Section 1** **IDENTITY OF THE PARTIES**

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**1.1 Parties.** DNR is authorized to enter into this Contract. DNR's address is: Wallace State Office Building, 502 East 9<sup>th</sup> Street, Des Moines, Iowa 50319.

The University of Iowa (Contractor), a State of Iowa educational institution, is organized under the laws of the State of Iowa and authorized to do business in the State of Iowa. The Contractor's address is: 2 Gilmore Hall, Iowa City, Iowa 52242.

**1.2 Project Managers.** Each party has designated a Project Manager, who shall be responsible for oversight and negotiation of any contract modifications, as follows:

DNR Technical Contact: Wayne Gieselman  
Department of Natural Resources  
Wallace State Office Building  
502 East 9<sup>th</sup> Street  
Des Moines, IA 50319-0034  
(515) 281-5817  
[Wayne.Gieselman@dnr.iowa.gov](mailto:Wayne.Gieselman@dnr.iowa.gov)

DNR Administrative Contact: Maggie Clover  
Department of Natural Resources, F.O. #5  
401 SW 7<sup>th</sup> Street, Suite I  
Des Moines, IA 50309-4611  
(515) 725-0293  
[Maggie.Clover@dnr.iowa.gov](mailto:Maggie.Clover@dnr.iowa.gov)

University Technical Contact: Michael D. Wichman  
University Hygienic Laboratory  
102 Oakdale Campus, H101 OH  
Iowa City, IA 52242  
(319) 335-4500  
[mwichman@uhl.uiowa.edu](mailto:mwichman@uhl.uiowa.edu)

University Administrative Contact: Wendy Beaver, Sr. Associate Director  
Sponsored Programs  
The University of Iowa  
2 Gilmore Hall  
Iowa City, IA 52242  
319/335-42123  
[wendy-beaver@uiowa.edu](mailto:wendy-beaver@uiowa.edu)

## **Section 2**

## **STATEMENT OF PURPOSE**

The parties have entered into this Contract for the purpose of retaining the Contractor to: assist DNR in determining the quality of the environment of the State of Iowa by providing field and laboratory services in support of environmental control programs. This support will include summarizing and reporting on environmental quality data. The following three areas within the DNR will be provided positions through this Contract: DNR's Director's Office, Dam Safety Inspectors, and Corrective Action Specialist.

## **Section 3**

## **DURATION OF CONTRACT**

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**3.1 Term of Contract.** The term of this Contract shall be **July 1, 2008 through June 30, 2009** unless terminated earlier in accordance with the Termination section of this Contract.

**3.2 Approval of Contract.** If the amount of compensation to be paid by DNR according to the terms of this Contract is equal to or greater than \$25,000.00 (twenty five thousand dollars), then performance shall not commence unless by June 5, 2008 this Contract has been approved by the Environmental Protection Commission/Natural Resources Commission.

**3.3 Renewal.** The parties shall have the option to renew and extend this Contract for subsequent periods, adding up to no more than 6 years total, by executing a signed Contract amendment prior to the expiration of this Contract.

## **Section 4**

## **DEFINITIONS**

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"Deliverables" shall mean services to be provided by, or on behalf of, the Contractor pursuant to this Contract. Deliverables shall include the tasks set out in this Contract and everything produced by the Contractor that is related to the tasks, such as reports, meetings, documentation, designs, copy, artwork, data, information, graphics, images, processes, techniques, materials, plans, papers, forms, studies, modifications, content, concepts, and all other tangible and intangible works, materials and property of every kind and nature that are related to the deliverables.

## **Section 5**

## **STATEMENT OF WORK**

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**5.1 Statement of Work.** Unless otherwise indicated, all requests for approvals, reports, schedules, etc., shall be directed by UHL to Barbara Lynch, Field Services and Compliance Bureau, who shall serve as the Departmental representative for all references to "the Department" or to "DNR."

Activities listed under Tasks 2,3,4,5,7, and 9 shall be conducted in accordance with the U.S. EPA Quality Assurance Program Plan and the applicable Work/Quality Assurance Project Plan. For new activities, Work/Quality Assurance Project Plans shall be developed by DNR and reviewed by the UHL before the monitoring project begins. When possible, DNR shall provide the UHL ten working days for review. All Work/Quality Assurance Project Plans shall be understood to incorporate U.S. EPA approved analytical methods unless otherwise noted in this statement of work.

All data entry under Task 2, 3, 4, 5, and 7 shall be performed according to the approved Standard Operating Procedure (SOP), which is reviewed by UHL once per year as part of the laboratory certification process and available to DNR upon request.

The Contractor shall perform the following tasks:

**Task 1: Provide the following positions for the Department:**

- one part-time (75%) position in the Director's Office
- three part-time contract inspector positions for the Dam Safety Program
- one Corrective Action Specialist for LUST sites.

**Task 2: Perform sampling, analysis, and reporting during the Department's wastewater treatment facility compliance sampling inspection (03WQCSI)**

- Develop a proposed quarterly sampling schedule within fifteen (15) calendar days of receipt of the following information: the facilities, the location of the sampling sites, the types of samples to be collected and the analyses required. This information will be provided quarterly, at least one month prior to the beginning of the new quarter, by Barbara Lynch, Chief of the Compliance and Enforcement Bureau.
- Collect and analyze a maximum of two hundred (200) 24-hour influent and effluent composite samples from thirty (30) wastewater treatment facilities during compliance sampling inspections.
- Flow-weighted composite samples shall be collected during the compliance sampling. UHL shall offer a split of all samples to the treatment facility. UHL shall analyze the samples for regulated pollutants, selected parameters having water quality standards, and other characteristic pollutants as specified each quarter. We estimate that approximately 50% of the requested sample analyses shall include uninhibited BOD<sub>5</sub>. Twenty-four (24-hour) flow measurements shall be obtained for the day of sampling. Guidance shall be given by the field office on the locations for taking flow, dissolved oxygen and other measurements. Sample collection, storage, preservation, transportation and chain-of-custody shall conform to the procedures specified in the U.S. EPA NPDES Compliance Sampling Manual.
- Check the accuracy, as facility configuration allows, of installed flow measuring devices within each facility. The results of this evaluation shall be noted on the sampling results sheet.

- Code samples collected for the activity as **03WQCSI**. All samples submitted to UHL by Department or UHL staff shall be coded and include a detailed written or photocopied list of the analyses to be performed (unless other arrangements have been made before shipment of the sample to UHL). UHL log-in procedures shall accommodate this code.
- Report results of the analyses of samples and flow verification (if collected) to the field office requesting the inspection. Results shall be reported in a format discussed and agreed to by the parties. The results shall indicate if 24-hour flow or time composites were collected.

**Task 3: Analyze and report samples collected by Department staff for field activities support (04WQFS)**

- Provide sample containers and ice chests for sample transport.
- Analyze six hundred and twenty five (625) samples for any of the parameters specified in WQ1 or for other additional parameters as specified by Department staff. The 625 samples shall be submitted by Department staff. These samples shall be collected during compliance evaluation inspections of wastewater treatment plants and sanitary landfills, and investigations of feedlot complaints and other sources of surface water contamination not covered elsewhere in this statement of work.
- Code samples collected for the activity as **04WQFS**. All samples submitted to UHL by Department or UHL staff shall be coded and include a detailed written or photocopied list of the analyses to be performed (unless other arrangements have been made before shipment of the sample to UHL). UHL log-in procedures shall accommodate this code.

**WQ1 – FIELD SUPPORT PARAMETERS**

	<b>BOD<sub>5</sub></b>	<b>INHIBITED BOD<sub>5</sub></b>
Total Suspended Solids	Ammonia Nitrogen	
pH	Oil and Grease	
Heavy Metals	Solids Series	
	Fecal Coliform (April – October)	
Organics:		
	Petroleum Products	
	Semi-Volatiles , including Pesticides	
	Common Herbicides	
	Organophosphate Insecticides,	
	Chlorinated Hydrocarbon Insecticides/PCBs	
	Acid Herbicides	
	Polycyclic Aromatic Hydrocarbons (PAHs)	

**Task 4: Analyze and report water, fish and/or waste samples collected by Department staff during fish kill investigations (05WQFK)**

- Provide sample containers and ice chests for sample transport.
- Analyze water, fish and/or waste samples collected by Department staff during the investigation of fish kills not related to emergency response spills. The samples shall be analyzed for any of the parameters listed in WQ2 and for any additional parameters requested by the investigating personnel. UHL staff shall be available for consultation with Department staff to determine what analyses should be performed. The analytical results shall be submitted to the office that investigated the fish kill.
- Code samples collected for the activity as **05WQFK**. All samples submitted to UHL by Department or UHL staff shall be coded and include a detailed written or photocopied list of the analyses to be performed (unless other arrangements have been made before shipment of the sample to UHL). UHL log-in procedures shall accommodate this code.
- Payments for samples analyzed for fish kill investigations shall be negotiated on a case-by-case basis by UHL and the Department, and these fees shall be in addition to amounts specified elsewhere in this contract.

**WQ2 – FISH KILL SAMPLES**

BOD<sub>5</sub>                      Ammonia  
 Total Suspended Solids pH  
 Chloride  
 Heavy Metals

**Task 5: Analyze and report water, fish, or solid samples collected by Department staff during emergency response investigations (07WQER)**

- Provide sample containers and ice chests for sample transport.
- UHL shall analyze approximately seventy-five (75) water, fish, or solid samples collected by Department staff during emergency response investigations. The types of analyses to be performed shall be identified by the sample collector but shall generally fall into three categories: Industrial chemicals, such as solvents and PCBs, agricultural chemicals, including pesticides and fertilizers, and metals. UHL staff shall be available for consultation with Department staff on the analyses that need to be performed.
- Code samples collected for the activity as **07WQER**. All samples submitted to UHL by Department or UHL staff shall be coded and include a detailed written or photocopied list of the analyses to be performed (unless other arrangements have been made before shipment of the sample to UHL). UHL log-in procedures shall accommodate this code.

**Task 6: Analyze fish tissue samples collected by DNR Fisheries Bureau staff during follow-up fish tissue monitoring (WQFT)**

- Contingent upon approval from Marion Conover, Fisheries Bureau, UHL will analyze fish tissue samples collected by DNR Fisheries Bureau staff during follow-up fish tissue monitoring. A list of the number of samples and compounds to be analyzed will be billed to the Fisheries Bureau and will be determined by UHL for each project. Samples will generally be analyzed for some of the analytes listed in WQ3.
- Code samples collected for the activity as **WQFT**.

**WQ3 – FISH TISSUE MONITORING\***

Chlorinated Hydrocarbon Insecticides PCB's

beta – BHC    Aroclor- 1016



delta – BHC    Aroclor- 1221

gamma – BHC Aroclor- 1232

Heptachlor    Aroclor- 1242

Aldrin            Aroclor- 1248

Heptachlor epoxide            Aroclor- 1254

Endosulfan I    Aroclor- 1260

Dieldrin

4,4' – DDE

Endrin aldehyde

Chlordane

Toxaphene

Endosulfan sulfate

4,4' – DDT    Metals

cis-chlordane    Mercury

trans-chlordane

cis-nonachlor

trans-nonachlor

oxychlordane

- \* In general, DNR follow-up studies only analyze for parameters that exceeded criteria during routine, yearly sampling (i.e., in the RAFT program).

**Task 7: Analyze and report samples collected by Department staff from storm water runoff (WQSWR)**

- Provide sample containers and ice chests for sample transport.
- Analyze samples for any of the parameters specified in WQ4 or other parameters as specified by the collector. The samples shall be submitted by Department staff. These samples shall be collected during evaluations of storm water runoff from industrial activities or municipal storm sewer systems.
- Code samples collected for the activity as **WQSWR**. All samples submitted to UHL by Department or UHL staff shall be coded and include a detailed written or photocopied list of the analyses to be performed (unless other arrangements have been made before shipment of the sample to UHL). UHL log-in procedures shall accommodate this code.
- UHL and DNR shall meet to agree upon any adjustments in the number of samples to be submitted, the fee per sample and the amount stated in Section 7.4.

**WQ4 – STORM WATER RUNOFF MONITORING PARAMETERS**

5-day Biological Oxygen Demand	Total Cyanide	Total Phosphorous
5-day Carbonaceous Oxygen Demand	Ethylene Glycol	Pentachlorophenol
Ammonia – Nitrogen	Fecal Coliform	Potassium
Total Arsenic	Total Iron	Propylene Glycol
Total Barium	Total Kjeldahl Nitrogen	Total Selenium
Bicarbonate	Total Lead	Total Silver

Total Cadmium	Dissolved Magnesium	Sodium
Calcium	Total Magnesium	Sulfate
Chemical Oxygen Demand	Total Mercury	Total Dissolved Solids
Chloride	Total Nickel	Total Organic Carbon
Total Chromium	Nitrate+Nitrite (Total as N)	Total Suspended Solids (TSS)
Total Copper	Oil and Grease	Total Zinc
		pH

**Task 8: Provide a fee schedule to the Department for the sample analysis of storm water (WQ4) and drinking water samples in compliance with the requirements of the SDWA.**

**Task 9: Analyze and report samples collected by Department staff for water supply monitoring (16WSCOMP, 17WSTECH)**

- Analyze approximately 135 samples of raw, intermediate, or finished water collected from public water supplies by field office or central office staff of the Environmental Services Division of DNR. Field office staff shall identify those analytes that are of specific interest. In addition, UHL shall report all analytes determined by the same U.S. EPA analytical drinking water method.
- UHL shall analyze no more than five (5) samples of raw or finished water collected from public water supplies where synthetic organic compounds (SOCs) or pesticides are suspected, have previously been detected or if the system source has been determined vulnerable by the Department. Samples shall be collected by field office or central office staff of the Environmental Services Division of DNR. Field office or central office staff shall submit a minimum of two liters of sample (additionally, three 40-ml vials should be submitted if volatiles are requested).
- UHL shall analyze no more than five (5) samples of raw or finished water collected from public water supplies by field office or central

office staff of the Environmental Services Division of DNR. Parameters for analysis shall include either regulated compounds or unregulated compounds for which a health advisory, established by U.S. EPA, exists. In addition, analysis for ethylene dibromide and 1,2-dibromo-3-chloropropane shall be requested, by notification from Barbara Lynch. The fees for these two compounds shall be billed to the Department separately.

- UHL shall analyze no more than nine (9) samples of drinking water collected from public water systems by field office or central office staff of the Environmental Services Division of DNR during the investigation of complaints by the public, not involving identified spills or aesthetic problems.
- UHL shall analyze no more than nine (9) drinking water samples for the parameters identified by the sample collector and shall include metals, solvents, or petroleum products. Because of the possible health consequences of this contamination, the analysis shall be given highest priority among samples analyzed under this scope of work. The collector shall be field office or central office staff of the Environmental Services Division of DNR.
- UHL shall analyze no more than thirty-five (35) drinking water samples from public water supplies by field office or central office staff of the Environmental Services Division of DNR during the investigation of complaints by the public regarding aesthetic problems.
- UHL shall analyze no more than thirty-five (35) drinking water samples for the parameters identified by the sample collector, to include iron, manganese, iron bacteria, or any other unregulated contaminant that might be the cause of aesthetic problems. The collector shall be field office or central office staff of the Environmental Services Division of DNR.
- Analyze approximately one hundred (100) drinking water samples collected through sanitary surveys, MCL investigations and technical assistance for bacterial analyses. Samples submitted to UHL shall be coded **Water Supply Support Bacteria**.

- Samples submitted to UHL shall be coded as **16WSCOMP** if they are to be used for compliance purposes. Samples shall be coded as **17WSTECH** if they are being collected for the purpose of technical assistance to a public water supply on the part of the Department. All samples properly identified and submitted to UHL by Department or UHL staff shall be coded to a specific monitoring activity for the SDWA and shall include a detailed written or photocopied list of analyses. UHL log-in procedures shall accommodate this code. For those submittals not properly identified, UHL shall notify the person who submitted the sample that the sample will be rejected.
- UHL shall perform all analyses in accordance with the applicable procedures and detection limits as specified in the Federal Register and/or the specific U.S. EPA method number. Quality control shall conform at a minimum to the standards listed in EPA Manual for the Certification of Laboratories Analyzing Drinking Water, Fifth Edition (EPA 815-R-05-004, January, 2005) or alternative Department/EPA-approved controls. UHL shall specify quantitation limits for each analyte with each analytical result.
- Enter the analytical results of all Department water supply monitoring into the State Drinking Water Information System (SDWIS) for any contaminant that has a contaminant identification number. The Department shall notify UHL of additional contaminant identification numbers.
- UHL and DNR shall meet to agree upon any adjustments in the number of samples to be submitted, the fee per sample and the amount stated in Section 7.4.

**5.2 Final Notice of Acceptance.** If all the Tasks required by the Statement of Work have been timely completed consistent with the timeframes identified therein and all deliverables and services required by this Contract have been completed and delivered, and implementation of the Statement of Work is completed and successfully deployed, then DNR shall issue a written Final Notice of Acceptance within 30 days.

**5.3 Non-Exclusive Rights.** This Contract is not exclusive. DNR reserves the right to select other Contractors to provide services similar or identical to the Scope of Services described in this Contract during the term of this Contract.

**5.4 Stop Services.** In addition to its other remedies described herein, DNR shall have the right at any time during the Contract term to direct the services of Contractor fully or partially suspended or stopped, if the deliverables or services fail to conform to applicable specifications and requirements in this Contract. DNR shall give Contractor written notice of a stop work directive. DNR shall provide to Contractor the reasons for

the stop work directive and pay the Contractor for any and all work performed prior to the issuance of the stop work directive.

**5.5 Industry Standards.** Services rendered pursuant to this Contract shall be performed in a professional and workmanlike manner in accordance with the terms of this Contract and the standards of performance considered generally acceptable in the environmental laboratory industry for similar tasks and projects. In the absence of a detailed specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard.

**5.6 Amendments to Statement of Work – Change Order Procedure.** Modifications, deletions and additions may be made to a Statement of Work at any time during the term of this Contract by mutual written consent of the parties. Any amendment to a Statement of Work shall be called a Change Order, and the following procedures shall be followed:

**5.6.1 Written Request.** DNR shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Services.

**5.6.2 The Contractor's Response.** The Contractor shall submit to DNR a time estimate and an estimated budget for the requested Change Order within five (5) business days of receiving the Change Order Request, if Contractor decides, in its sole discretion, to provide the services in the requested Change Order.

**5.6.3 Acceptance of the Contractor Estimate.** If DNR accepts the time estimate and estimated budget presented by the Contractor within five (5) business days of receiving the Contractor's response, the Contractor shall perform the modified services subject to time estimate and estimated budget included in the Contractor response. The Contractor's performance and the modified services shall be governed by the terms and conditions of this Contract, with a begin date agreed to by the parties.

**5.6.4 Adjustment to Compensation.** The parties acknowledge that a Change Order for this Contract may or may not entitle the Contractor to an equitable adjustment in the Contractor's compensation or the performance deadlines under this Contract and that such Change Order may require approval of the Natural Resources or Environmental Protection Commission.

## **Section 6                      MONITORING AND REVIEW**

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**6.1 Task Milestone Dates.** Unless otherwise indicated, all requests for approvals, reports, schedules, etc., shall be directed by UHL to Barbara Lynch, Field Services and Compliance Bureau, who shall serve as the Departmental representative for all references to "the Department" or to "DNR."

Following the date the Contract is signed by all parties, the Contractor shall use its best efforts to complete its obligations under this Contract by the Task Milestone Dates set out in the following table:

<b>Obligation</b>	<b>Task Milestone Date</b>
<b>Task 2, 9:</b> Prepare and submit monthly status report in a format discussed and agreeable by both parties.	To the Department within 15 calendar days of month's end
<b>Task 2:</b> Report the analytical results via the online data access web site at <a href="http://www.uhl.uiowa.edu">http://www.uhl.uiowa.edu</a> to the field office requesting the inspection.	Within 15 Calendar days after collection of samples. Extra time for analysis is allowed in cases when the analytical work warrants. A notification to the person who submitted the sample that analytical results from a sample shall be delayed and the reason for the delay shall be made within fifteen (15) calendar days of receipt of the sample if extra time is required for analysis.
<b>Task 3,4,5,7:</b> Report the analytical results via the online data access web site at <a href="http://www.uhl.uiowa.edu">http://www.uhl.uiowa.edu</a> to the Department staff who collected the sample(s).	Within fifteen (15) calendar days of receipt of the samples. Extra time for analysis is allowed in cases when the analytical work warrants. A notification to the person, who submitted the sample, that analytical results from a sample shall be delayed and the reason for the delay, shall be made within fifteen (15) calendar days of receipt of the sample if extra time is required for analysis.
<b>Task 9:</b> Report the analytical results via the online data access web site at <a href="http://www.uhl.uiowa.edu">http://www.uhl.uiowa.edu</a> to the Department staff who collected the sample(s).	Within fifteen (15) calendar days of receipt of the samples. Radiological results shall be reported within fifty (50) calendar days of sample receipt, or by the tenth day of the month following the end of the calendar quarter in which the samples were analyzed. Additional time for analysis shall be requested to the sample collector.
<b>Task 2,3,4,5,7,9:</b> Provide sample information to the Department upon request. Provide copies of Methods Manuals/Standard Operating Procedure Manuals (available from the laboratory) to the Department upon request.	on-going

With the exception of the time extensions cited in table above, Contractor shall notify DNR within 5 working days upon discovery of any delay in any of the above-designated portions of its obligations. Contractor and DNR shall discuss updated Task Milestone

Dates. If the parties are unable to mutually agree to updated Task Milestone Dates within 30 days of DNR's receipt of notice of a delay, DNR may terminate this Contract for cause.

**6.2 Review Meetings.** Following the date the Contract is signed by all parties, the Project Managers shall begin to meet quarterly to discuss progress made by the Contractor during the performance of this Contract. The meetings shall occur, either in person or by telephone conference call. Meetings may be postponed only on a case-by-case basis by mutual agreement of the parties.

**6.3 Status Reports.** Prior to each review meeting, each Technical Contact shall provide a status report listing:

- accomplishments during the previous period,
- activities planned for the upcoming period,
- Tasks completed or deliverables produced during the previous period,
- an updated schedule of upcoming deliverables, and
- any problems or concerns encountered since the last meeting.

At the next scheduled meeting after which any party has identified in writing a problem, the party responsible for resolving the problem shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that shall facilitate problem resolution.

**6.4 DNR Right to Review and Observe.** DNR shall have the right to review and observe, at any time, completed work or work in progress. Contractor shall allow the State of Iowa or DNR, within normal business hours and upon prior written notification to Contractor, to inspect its facilities and books and records relating to invoicing for the purpose of monitoring and evaluating performance of this Contract.

## Section 7 COMPENSATION

**7.1 Source of Funding.** The source of funding for this Contract is EPA Performance Partnership Grant and the EPA Section 319 Nonpoint Source Management Program.

**7.2 Not-to-Exceed Total Amount of Contract.** Payment for the work performed by Contractor according to the terms of this Contract shall not exceed \$359,766. Payment shall be for satisfactory completion of the Statement of Work outlined in this Contract, provided that Contractor has complied with the terms of this Contract.



**7.3 Budget.** The budget for this Contract shall be as follows:

<b>Task</b>			<b>Amount of Compensation Allotted to Task (Variable Payment)</b>
Task 1	*Director's Office Staff		*\$102,653
	*Dam Safety Inspectors		*\$26,250
	*UST Corrective Action Specialist		*\$55,524
<b>Total</b>			<b>\$184,427</b>

\* Includes an estimated 5% U of I, SFY 2008 professional and scientific classification raise. If the final professional and scientific classification raise is less than 5%, these values shall be adjusted downward accordingly.

<b>Task</b>	<b>Water Sample Identifier</b>	<b>Number of Samples</b>	<b>Amount of Compensation Allotted to Task (Fixed Payment)</b>	<b>Amount of Compensation Allotted to Task (Variable Payment)</b>
Task 2	03WQCSI	200	\$62,600	
Task 3	04WQFS	625	\$55,625	
Task 4	05WQFK	Variable		\$3,000
Task 5	07WQER	75	\$12,975	
Task 7	WQSWR	Variable		\$5,000
Task 9	Water Supply Bacteria	Variable		\$1,350
Task 9	16WSCOMP	Variable		\$4,250
Task 9	17WSTECH	Variable		\$2,890
Task 6	WQFT	Variable		\$1,000
<b>Totals</b>			<b>\$131,200</b>	<b>\$17,490</b>

Note: Calculate 8% of Subtotal for this value	<b>Subtotal</b>	<b>\$333,117</b>
	<b>8% Indirects</b>	<b>\$26,649</b>

<b>Total</b>	<b>\$359,766</b>
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**7.4 Submission of Invoices.** Submission of invoices to DNR shall begin following the date the contract is signed by all parties. Invoices are due within 60 days following the end of the quarter.

Each invoice shall comply with all applicable rules concerning payment of such claims. Each invoice shall be itemized as per the line item budget categories in the budget contained in this Contract. DNR shall have the right to dispute any invoice item submitted for payment and to withhold payment of any disputed amount if DNR reasonably believes the invoice is inaccurate or incorrect in any way. Invoices should be sent to:

Iowa Dept. of Natural Resources  
Attn: Shirley Christoffersen  
Wallace State Office Building  
502 E. 9<sup>th</sup> Street  
Des Moines, IA 50319-0034

If UHL needs to subcontract an analysis for 2,3,7,8-TCDD (Dioxin), the Department shall reimburse UHL for costs incurred. Prior to subcontracting for this analyte, UHL must obtain Department approval from Barbara Lynch.

**7.5 Payment of Invoices.** DNR shall pay approved invoices in arrears and in conformance with Iowa Code section 8A.514. Unless otherwise agreed to in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State of Iowa for any services provided by or on behalf of the Contractor under this Contract.

DNR will pay Contractor within sixty (60) days following receipt of invoices. Payment will be issued to:

University of Iowa  
University Hygienic Laboratory – Accounts Receivable  
102 Oakdale Campus, H101 OH  
Iowa City, IA 52242

**7.6 No advance payment.** No advance payments shall be made for any Deliverables provided by Contractor pursuant to this Contract.

**7.7 Delay of Payment Due to Contractor's Failure.** If DNR determines that the Contractor has failed to perform or deliver any service or product required by this Contract, then the Contractor shall not be entitled to any compensation for that service or product, or any further compensation if compensation has already occurred, under this Contract until such service or product is performed or delivered. DNR shall withhold

that portion of the invoice amount which represents payment for the task or deliverable that was not completed, delivered and successfully deployed.

**7.8 Erroneous Payments and Credits.** Contractor shall promptly re-pay or refund to DNR the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by Contractor or notification by DNR of the overpayment or erroneous payment.

**7.9 Final Payment.** Unless otherwise provided in this Contract, by state law or otherwise expressly agreed to by the parties to the Contract, final payment under a settlement upon termination of this Contract shall not constitute a waiver of either party's claims against the other party under this contract or applicable performance and payment bonds.

## **GENERAL CONDITIONS**

### **Section 8 COMPLIANCE WITH THE LAW**

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The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or suppliers. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract. The Contractor may be required to submit its affirmative action plan to DNR of Management to comply with the requirements of 541 IAC, Sec 4. Contractor represents that it shall comply with all federal, state and local laws applicable to the performance of its obligations under this Contract.

### **Section 9 TERMINATION**

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**9.1 Termination Due to Lack of Funds or Change in Law.** DNR shall have the right to terminate this Contract without penalty by giving thirty (30) days' written notice to the Contractor as a result of any of the following:

**9.1.1** The legislature or governor fail in the sole opinion of DNR to appropriate funds sufficient to allow DNR to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or if funds anticipated for the continued fulfillment of the Contract are, at any time, not forthcoming or are insufficient, either through the failure of DNR to appropriate funds or funding from a federal source is reduced or discontinued for any reason, or through discontinuance or material alteration of the program for which funds were provided,

**9.1.2** If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by DNR to make any payment hereunder are insufficient or unavailable for any other reason as determined by DNR in its sole discretion; or

**9.1.3** If DNR's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or

**9.1.4** If DNR's duties, programs or responsibilities are modified or materially altered; or

**9.1.5** If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects DNR's ability to fulfill any of its obligations under this Contract.

**9.2 Immediate Termination by DNR.** DNR may terminate this Contract for any of the following reasons effective immediately without advance notice and without penalty:

**9.2.1** In the event the Contractor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

**9.2.2** DNR determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, any person's life, health or safety to be jeopardized;

**9.2.3** The Contractor furnished any statement, representation or certification in connection with this Contract or the RFP which is materially false, deceptive, incorrect or incomplete.

**9.3 Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for DNR to declare the Contractor in default of its obligations under this Contract.

**9.3.1** The Contractor fails to perform, to DNR's satisfaction, any material requirement of this Contract or is in violation of a material provision of this Contract;

**9.3.2** DNR determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;

**9.3.3** The Contractor fails to make substantial and timely progress toward performance of the Contract;

**9.3.4** The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or DNR reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

**9.3.5** The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract;

**9.3.6** The Contractor has engaged in conduct that has or may expose the State or DNR to liability, as determined in DNR's sole discretion;

**9.3.7** The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or the Contractor has misappropriated a trade secret, or

**9.3.8** Contractor fails to comply with any of the Task Milestone Dates contained in this Contract in section 6.1.

**9.4 Notice of Default.** If there is a default event caused by the Contractor, then DNR shall provide thirty (30) days' written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in DNR's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, DNR may either:

**9.4.1** Immediately terminate the Contract without additional written notice; or,

**9.4.2** Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

**9.5 Termination upon Notice.** Following thirty (30) days' written notice, either party may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the other party. Following termination upon notice by DNR, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to DNR up to and including the date of termination.

**9.6 Remedies of the Contractor in Event of Termination by DNR.** In the event of termination of this Contract for any reason by DNR, DNR shall pay only those amounts, if any, due and owing to the Contractor for services actually rendered up to and including the date of termination of the Contract and for which DNR is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to DNR under this Contract in the event of termination. However, DNR shall not be liable for any of the following costs:

**9.6.1** The payment of unemployment compensation to the Contractor's employees;

**9.6.2** The payment of workers' compensation claims, which occur during the Contract or

extend beyond the date on which the Contract terminates;

**9.6.3** Any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract, unless specifically agreed to in this Contract;

**9.6.4** Any taxes that may be owed by the Contractor in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

**9.7 The Contractor's Termination Duties.** The Contractor upon receipt of notice of termination by DNR, shall:

**9.7.1** Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report (excluding the final invoice) within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including,

- 9.7.2** Immediately cease using and return to DNR any personal property or materials, whether tangible or intangible, provided by DNR to the Contractor under this Contract.
- 9.7.3** Comply with DNR's instructions for the timely transfer of any active files and work product produced by the Contractor under this Contract.
- 9.7.4** Cooperate in good faith with DNR, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor.
- 9.7.5** Immediately return to DNR any payments made by DNR for services that were not rendered by the Contractor.

## Section 10 INDEPENDENT CONTRACTOR

## Section 11 CONFLICT OF INTEREST

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**11.3** During the term of this Contract, Contractor shall not enter into any activity described in paragraph 11.2 or which constitutes any unacceptable conflict of interest. Contractor shall immediately disclose to DNR the existence of any conflict of interest, which are described in paragraph 11.2 and are in progress when the term of this Contract begins.

## Section 12 AMENDMENTS

This contract may be amended or renewed only by written mutual consent of the parties.

## Section 13 CHOICE OF LAW AND FORUM

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. The parties shall comply with the provisions of Iowa Code section 679A.19 regarding disputes between government agencies. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa, wherever jurisdiction is appropriate. No provision of this Contract shall be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to DNR, Contractor, or the State of Iowa.

## Section 14 SEVERABILITY

If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

**Section 15** **ENTIRE AGREEMENT**

This contract constitutes the entire agreement between DNR and the Contractor with respect to the subject matter hereof, and the Contractor acknowledges that it is entering into the Contract solely on the basis of the terms and conditions herein contained and not in reliance upon any representation, statement, inducement or promise, whether oral or written, not contained herein. This Contract supersedes all prior contracts and agreements between DNR and the Contractor for the services provided in connection with this contract.

## Section 16

This Contract may not be assigned, transferred or conveyed, in whole or in part, without the prior written consent of the other party. For the purpose of construing this provision, a transfer of a controlling interest in the Contractor shall be considered an assignment.

## Section 17 REPRESENTATIONS

**17.1 Construction of Representations Expressed in this Contract with Representations Implied by Law.** All representations made by the Contractor in all



provisions of this Contract and the Proposal by the Contractor, whether or not this Contract specifically denominates the Contractor's promise as a representation or whether the representation is created only by the Contractor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to DNR, shall not be construed as limiting or negating any representation provided by law, including without limitation, representations which arise through course of dealing or usage of trade. The representations expressed in this Contract are intended to modify the representations implied by law only to the extent that they expand the representations applicable to the goods and services provided by the Contractor. The provisions of this Section apply during the term of this Contract and any extensions or renewals thereof.

**17.2 Concepts, Materials, and Works Produced.** Contractor represents that all the concepts, materials and Works produced, or provided to DNR pursuant to the terms of this Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and work product produced under this Contract. The Contractor represents to the best of its knowledge that the concepts, materials and work product produced under this contract shall not infringe upon any other work, other than material provided by the Contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and work product produced under this contract will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents that it is the owner of or otherwise has the right to use and distribute any software, the materials owned by the Contractor and any other materials, work product produced under this contract and methodologies used in connection with providing the services contemplated by this Contract.

**17.3 Professional Practices.** The Contractor represents that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

**17.4 Conformity with Contractual Requirements.** The Contractor represents that the work product produced under this contract will appear and operate in conformance with the terms and conditions of this Contract.

**17.5 Authority to Enter into Contract.** The Contractor represents that it has full authority to enter into this Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to DNR.

**17.6 Obligations Owed to Third Parties.** The Contractor represents that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that DNR will not have any obligations with respect thereto.

**17.7 Title to Property.** The Contractor represents that title to any property assigned, conveyed or licensed to DNR associated with this Contract is good and that transfer of title or license to DNR is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

**17.8 Industry Standards.** The Contractor represents that all aspects of the goods and services provided or used by it shall conform to the applicable industry standards in the performance of this Contract.

**17.9 Technology Updates.** The Contractor represents that it shall continually use and integrate to the best of its ability the most current and up-to-date technology commercially available.

## **Section 18 PROPERTY, INTELLECTUAL PROPERTY, PATENT AND COPYRIGHT**

**18.1 Rights in Data for Public Work Products.** Contractor shall presume that all work products, or subject data generated or collected as directed by the Contract shall be public information unless otherwise designated in writing by the DNR. Unless expressly contradicted in the Special Conditions, it is expected that the work products developed or produced in connection with this Contract will be made publicly available and will become public information and Sections 18.2 through 18.4 will not be applicable. In the event the Special Conditions specify that the work products will not be made publicly available, then General Conditions 18.2 through 18.4 will apply

**18.2 Rights in Data for Non-public Work Products.** DNR shall be and shall remain the owner of all data and records provided to the Contractor. The Contractor will not use DNR's data and records for any purpose other than providing services under the Contract, nor will any part of the data and records be disclosed, sold, assigned, leased, or otherwise disposed to third parties or commercially exploited by or on behalf of the Contractor.

**18.3 Ownership of Work Product.** DNR shall own all work products developed or produced in connection with this Contract. The Contractor shall give DNR all assistance reasonably requested by DNR to perfect DNR's ownership of all work produced under this Contract, including the execution and delivery of documents assigning title to DNR work produced under this Contract. All applicable rights to patents, copyrights, trademarks, trade secrets and other property rights in the work produced under this Contract shall be the property of DNR. DNR shall grant the Contractor a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work produced under this Contract for the purposes of complying with this contract or any relevant provision of state or federal law.

### **18.4 Copyrights and Use of Data**

**18.4.1** The term "subject data" used in this clause includes writing, technical reports, sound recordings, magnetic recordings, computer programs, computerized databases, databases in hard copy, pictorial reproductions, plans, drawings, including engineering or manufacturing drawings, specifications, or other graphical representations, and works of any similar specifications, or other graphical representations, and works of any similar nature (whether or not copyrighted) which the Contractor submits or which DNR specifies to be delivered under this Contract or which the Contractor develops or produces and DNR pays for under this Contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

**18.4.2** Except as may otherwise be provided in this Contract, when publications, films, or similar materials are developed directly from a project supported by DNR, the Contractor is free to arrange for copyright without approval. The

Contractor agrees to and does hereby grant to DNR, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world for Department purposes to publish, translate, reproduce, deliver, perform, dispose of and to authorize others so to do, all subject data, or copyrightable material based on such data, covered by copyright now or in the future.

**18.4.3** The Contractor shall not include in the subject data any copyrighted matter without the written approval of the Director, unless the Contractor provides DNR with the written permission of the copyrighted owner for DNR to use the copyrighted matter in the manner provided for in subsection 16.2 above.

**18.4.4** Nothing contained herein shall imply a license to DNR under any patent or be construed as affecting the scope of any license or other rights.

**18.4.5** Unless otherwise limited below, DNR may, without additional compensation to the Contractor, duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all subject data.

**18.4.6** Notwithstanding any provisions of this Contract concerning inspection and acceptance, DNR shall have the right at any time to modify, remove, obliterate, or ignore any marking restricting disclosure of subject data if the marking is not authorized by the terms of this Contract.

**18.4.7** Data need not be furnished for standard commercial items or services which are normally sold, or have been sold, or offered to the public commercially by any supplier and which are incorporated as component parts in or to be used with the product or process being developed or investigated under this contract if, in lieu thereof, identification of source and characteristics (including performance specifications, when necessary) sufficient to enable DNR to procure the part or practice the process, or acquire an adequate substitute, are furnished.

**18.4.8** In addition to any data specified elsewhere in this contract to be furnished to DNR, the recipient shall retain and, upon written request of the Director at any time during project performance or within two years after project performance is completed, deliver any subject data not previously delivered.

**18.4.9** The Contractor shall exert all reasonable effort to advise the Director of DNR, at the time of delivery of the subject data furnished under this contract, of all invasions of the right-of-privacy contained therein and of all portions of such data copied from work not composed or produced in the performance of this contract and not licensed under this section.

**18.4.10** The Contractor shall report to the Director of DNR, promptly and in reasonable written detail, each notice or claim of copyright infringement received by the Contractor with respect to all subject data delivered under this contract. On receipt of this information, the parties hereto agree to confer to determine future uses to be made of the subject data.

**18.4.11** In the event of any claim or suit against DNR, the state of Iowa, or the United States, on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor agrees to furnish to DNR, when requested by the Director, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and

information shall be furnished at the expense of DNR except where the Contractor is financially responsible under section 33 of this contract.

**18.4.12** The Contractor or any or all of its employees or agents may duplicate, use and disclose all subject data deliverable under this contract, provided that the Contractor or such employees or agents acknowledge the contribution of DNR and the contract number of this contract and any copyright secured for such data; provided further that there shall be no pre-release or publication of data or findings connected with this in scholarly or professional journals or through public presentation or news release or otherwise until the performance of this contract is completed, unless prior written authorization has been obtained from DNR's Director.

## **Section 19 JOINT AND SEVERAL LIABILITY**

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If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, then all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default activities and obligations.

## **Section 20 WAIVER**

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Except as specifically provided for in a waiver signed by duly authorized representatives of DNR and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

## **Section 21 NOTICE**

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**21.1** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows in Section 1 of this Contract..

**21.2** Each such notice shall be deemed to have been provided:

**21.2.1** At the time it is actually received; or,

**21.2.2** Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery.

**21.3** From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

## **Section 22 CUMULATIVE RIGHTS**

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The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

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**Section 23** **TIME IS OF THE ESSENCE**

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Time is of the essence with respect to the performance of the terms of this Contract.

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**Section 24** **RECORD RETENTION AND ACCESS**

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In accordance with OMB Circular A-133, in the performance of services under this Contract, the Contractor shall be considered as a vendor and is not subject to the A-133 audit requirements or compliance with the federal cost principles of OMB Circular A-21. Payments to Contractor hereunder shall not be considered as Federal awards.

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**Section 25** **SOLICITATION**

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The Contractor represents that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

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**Section 26** **OBLIGATIONS BEYOND CONTRACT TERM**

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This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of DNR and the Contractor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.

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**Section 27** **DELAY OR IMPOSSIBILITY OF PERFORMANCE**

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The Contractor shall not be in default under this Contract if performance is delayed or if Contractor may not reasonably perform the Contract due to an act of God, flood, fire or similar events. In each such case, the delay or impracticability must be beyond the reasonable control and anticipation of the Contractor, and without the fault or negligence of the Contractor. If delay results from a subcontractor's conduct, from the Contractor's negligence or fault, or from circumstances which by the exercise of reasonable diligence the Contractor should have been able to anticipate or prevent, then the Contractor shall be in default and this paragraph shall not be applicable. It shall be the responsibility of the Contractor to prove that performance was delayed or impracticable within the meaning of this paragraph.

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**Section 28** **SUPERCEDES FORMER CONTRACTS OR AGREEMENTS**

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Unless this Contract is an amendment to a Contract entered into between DNR and Contractor and is designated as such, then this Contract supersedes all prior Contracts or Agreements between DNR and the Contractor for the services provided in connection with this Contract.

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**Section 29** **USE OF THIRD PARTIES AND SUBCONTRACTORS**

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The inclusion of subcontractor costs in Contractor's proposed budget and DNR's subsequent approval of the budget shall constitute approval to subcontract with those subcontractors. DNR shall have the right to review the subcontracts upon request.

Contractor may not contract with additional third parties for the performance of any of Contractor's obligations under this Contract without prior approval of the DNR.

## Section 30 SELF-INSURANCE BY THE STATE OF IOWA

Pursuant to and to the extent permitted by Iowa Code Chapter 669, DNR, Contractor, and the State of Iowa are self-insured against risks and hazards related to this Contract. No separate fund has been established to provide self-insurance, and the State of Iowa is not obligated to establish any such fund during the term of this Contract.

## Section 31 LIABILITY

Each party shall be responsible for its own negligent acts or omissions and those of its employees, agents, and officers, to the extent permitted by Iowa Code Chapter 669.

## Section 32 EQUAL EMPLOYMENT PROVISIONS

The Contractor has read and understands the provisions in Attachment A, Equal Employment Opportunity, attached hereto and made part of this Contract by this reference, and the Contractor agrees to conform to the requirements contained therein.

## Section 33 USE OF FEDERAL FUNDING

*This provision is applicable only if federal funds constitute a part of the payment to be rendered under this Contract. The Contractor has read and understands the provisions in Attachment B, Additional Requirements for Federally-funded Agreements, attached hereto and made part of this Contract by this reference, and the Contractor agrees to conform to the requirements contained therein.*

## **Attachment A**

### **Equal Employment Opportunity.**

The Contractor agrees to the following:

**A.1** The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, national origin, age, gender identity, gender orientation, pregnancy, family status, marital status or mental or physical disability. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated, during employment, without regard to their race, creed, color, religion, sex, national origin, age, gender identity, gender orientation, pregnancy, family status, marital status or mental or physical disability except where mental or physical disability relates to a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor's business. Such action shall include but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post notices, setting forth provisions of this nondiscrimination clause, in conspicuous places available to employees and applicants for employment.

**A.2** The Contractor shall in all solicitations or advertisements for employees, placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, creed, color, religion, sex, national origin, age, gender identity, gender orientation, pregnancy, family status, marital status or mental or physical disability except where mental or physical disability is a bona fide occupation qualification reasonably necessary to the normal operation of the Contractor's business.

**A.3** The Contractor shall comply with all relevant provisions of the Iowa Civil Rights Act of 1965, as amended, Iowa Executive Order 15 or 1973, Chapter 19B, Code of Iowa, Federal Executive Order 11246 of 1965, as amended by Federal Executive Order 11376 of 1967, and Title VI of the Civil Rights Act of 1964, as amended. The Contractor shall furnish all information and reports requested by the state of Iowa or required by, or pursuant to, the rules and regulations thereof and shall permit access to payroll and employment records by the state of Iowa for purposes of investigation to ascertain compliance with such rules, regulations or requests, or with this nondiscrimination clause.

**A.4** In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the aforesaid rules, regulations or requests, this Contract may be canceled, terminated or suspended in whole or in part. In addition, the state of Iowa may take such further action, and such other sanctions may be imposed and remedies invoked, as provided by the Iowa Civil Rights Act of 1965, as amended, Chapter 216, Code of Iowa, or as otherwise provided by law.

**A.5** The Contractor shall include the provisions of paragraphs 8.1 through 8.4 hereof in every subcontract, unless specifically exempted by approval of the state of Iowa, so that such provisions shall be binding on each subcontract. The Contractor shall take such action with respect to any subcontract as the state of Iowa may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the state of Iowa, the Contractor may request the state of Iowa to enter into such litigation to protect the interests of the state of Iowa.



## **Attachment B**

### **Additional Requirements for Federally-funded Agreements**

**B.1 Suspension and Debarment.** The Contractor certifies pursuant to 31 CFR Part 19 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency.

**B.2 Lobbying Restrictions.** The Contractor shall comply with all certification and disclosure requirements prescribed by 31 U.S.C. Section 1352 and any implementing regulations and shall be responsible for ensuring that any subcontractor fully complies with all certification and disclosure requirements.

**B.3 Pro-Children Act of 1994.** Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. Federal programs include grants, cooperative agreements, loans or loan guarantees and contracts. The law also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities (other than clinics) where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party. The Contractor certifies that it and its subcontractors will comply with the requirements of the Pro-Children Act of 1994 and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

**B.4 Drug Free Work Place.** The Contractor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations.